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Subject:— Opinions under the Land Revenue Code, Bombay, 1879

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30-A

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SA SC

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether trespassers on lands belonging to the Central Government can be evicted by the Collector under section 61 of the Bombay Land Revenue Code, 1879.

2. Lands vesting in the Central Government are subject to the Provincial law save in so far as the Federal law otherwise provides. Unlike section 26 of the Bombay City Land Revenue Act, 1876, the provisions of section 61 of the Bom. Land Revenue Code, 1879, are not restricted to lands vested in the Crown for the purposes of the Province, but apply to all Crown lands. Consequently it would be competent for the Collector to take suitable action under section 61 for removing encroachments on lands vesting in the Central Government.

Id/- P.N.M.
6/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 121, dated the 7th January 1942.

PSM. 2/5

Office of the R.L.A.

Section 55 of the Bombay Land Revenue Code provides, inter alia, that the Provincial Government may authorize the Collector to fix such rates as it may frm time to time deem fit to sanction for th use by landholders of water the right to which vests in th Crown and in respect of which norate is leviabe under Bombay Irrigation Act, 1879. Th section further provides that such rates sall b recoverable as land revenue. The section as it stands only confers ax power on th Provincial Government to authrize th Collector to fix the water rates. It does nt impose in any manner an obligation on the Provincial Government to authrize the Collector to fix such water rates. The section aplies to unalienated lands. The provisios under which the benefit of this th this section can be claimd in respect of lands in an alienated village are those contained in section 217 of he Code,. The question whether, by by virtue of section 217, section 55 of the Code applies or not to lands in alienated villages which are surveyed and settled has not be been raised in this case forconsideration of the R.L.A and it is not necessary to consider it for deciding the question referred to th R.L.A. in Secretary, R.D.'s note at p. 24 ante. Assuming that that the section does apply to th lands in this case, it is clear as pointed out above that section 55 of h the Code, confers only a discretionary power on Government and there is no obligation whatevr in law on Government exercise this power under any circumstances. There is nothing in this section or in any other provision of Code which imposes a legal obligation on Government to authrize the levy of a ter rate in any alienated village whichis surveyed and setled, on th application of the Inamdar of such village. Government is not, therefore, bound in this case to revover a water rate under sec. 55 of th Land Revenue Code at the bidding of the Inamdar. The answer to th question raised in Secretary, R.B.'s note at p.24 ante is in the negative.

Id/- P.N.M.
26/1

Remembrancer of Legal Affairs.

U.R. to R.D.,nNo. 783, dated the 27th January 1942.

PSM. 2/5

Submited.

Owing to diversion of th course of th nala running btween th villages of Bhamte and Vikharan, alluvial accretions have bee formed against certain Survey numbers of Bhamte. The Common boundary of the said two villages is the mid bed of the old course of th nala and part of the alluvial accretions falls within the limits of the village of Vikharan. The Collr, W.K. states that the alluvial accretions have ben granted to the occupants of the S.Nos. concerned of Bhamte and suggests that th these can be amalgamated with the S.Nos. only if th area which at present falls in Vikhan is transferred from that village to Bhamte. The Collr. asks for sanction of Govt. transfer of A G 1-28 of alluvial land from vikharan to Bhamte The R.D. states that the case is similar to th one disposed of in G.R.R.D.No. 5218/39 dated the 23/6/41 and suggests that the proposal may be sanctioned.

2. fter reviewing all the previous opinions the R.L.A. held that "neither section 7 nor section 126 of th Land Revenue Code empowers Govt. to transfer lands from one village to another. Nor does section 118 empower Govt. to effect such transfers (vide R.L.A.'s No. 6308, dated 17.11.36 followed in R.L.A.'s No.540 dated 15.1.40). Despite this opinion, it appears that on administrative grounds Govt. isud orders in G.R.R.D. No.5218/39, dated 23.6.41, sanctioning the Collr's proposal to transfer certain land from Hatalgeri to Sarubhapur village. The present reference also involve a similar question of transfer of lands from one village to another. The papers may be seen and returned (cf. R.L.A.'s No.5493, dated 20.6.41).

Sd/- 11/4
S.A.S.

A maybe done.

Id/-.R.T.K.
13/4
A.L.R.

Id/- R.S.H.
14/4
R.L.A.

Id/- P.N.M.
18-4

PSM. 2/5

G. R. to R.R.No.3418 dated the 21/4/42.

Office of the R.L.A.

Section 15 of the Bombay General Clauses Act, 1904, provides that where ~~h~~ by any ~~a~~ Bombay ~~Act~~, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment if it is made after th commencement of this ~~Act~~ Act, may be made either by name or by virtue of office. There is no express provision in sections 18 and 19 of ~~the~~ the Bombay L.R.Code, 1879, requiring that the appointment of the Survey Settlement Officer should be made by name. Consequently there is no legal objection to appointing the Mahalkari of Halol a Survey Setlement Officer under sections 18 and 19 of the Land Revenue Code, 1879 by virtue of office.

Id/- P.N.M.
18-5

Remembrancer of Legal Affairs.

Sd/-
18/5

U.R. to R.D.,No. 4121 dated the 19th May 1942.

PSM. 2/5

Office of the R.L.A.

Under section 37 of the Bombay City Land Revenue Act, 1876 all arears of rent payable any person in respect of the occupation of any house the property of the Crown can be realized in the same manner as other revenue demands under the provisions of section 13 of this Act. Section 13 provides for power of the Collector to recover the arrears by attachment and sale of the land on which the revenue is due or of any other property, moveable or immoveable of the defaulter. The Collector's powers under section 13 have been delegated under section 6 to the Manager, D.D.Chawls. (vide Collector's Order dated the 22nd March 1938). The salary of a defaulter can be attached as a debt after it has become due (vide B.H.C.Rep. A.C.110). A debt being moveable property there is no legal objection to attaching the salary of public servant under section 13 of the Bombay City Land Revenue Act when it has become due by the method described ~~29th Maxxmbxx~~ by the Solicitors to Government's letter No. M/D 10814/40 dated 29th November 1940 to the Collector of Bombay. This position appears to be confeded by the Post Master General in his letter No.HA-30/VI dated 2nd April 1941. (See the opinion of the Advocate General of India dated 20/5/1940). Still the Post Master General refuses to execute such an order of attachment on the ground that it could not be executed unless it was received from a competent Court of Law. He appears to rely on some opinion of the Solicitor to the Government of India but does not state where that opinion is to be found. Perhaps ~~xx xxxx xxnxsxxxxxxxx~~ he is relying on the last two sentences of the Solicitor's letter dated 20th May 1940. But the Solicitors to the Government of Bombay suggested a way out of difficulty and it is in accordance with that suggestion that the Manager, D. D.Chawls has served the orders of attachment. These orders are ~~x~~ served under section 36 of t e Bombay City Land Revenue Act and not under Civil Procedure Code. There is, therefore, no need to serve them through a Civil Court. The refusal of the Post Master General to execute the order of attachment issue under section 13 on t e ground that it was not issued by a competent court of law is not warranted. (See also section 14).

Id/- P.N.M.
4/6

P.T.O.

Id/- P.N.M. 4/6

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 4623, dated the 5th June 1942.

PSM. 2/5

Office of the R.L.As.

The questions referred for the consideration of the Remembrancer of Legal Affairs are:-

(1) Whether it is obligatory to follow the statutory procedure prescribed in sub-section (1) of section 117-L of the Bombay Land Revenue Code, 1879, during the period of section 93 regime, and

(2) Whether the words "a copy thereof" occurring in that provision means that each M.L.A. and M.L.C. should be supplied with copies of the settlement report, objections and reference to the Bombay Revenue Tribunal and its opinion or a copy of the report only.

2. As regards the first question, attention is invited to the Advocate General's opinion dated 21st April 1940 forwarded to the Revenue Department with R.L.A's U.R.No.4229, dated 30th April 1940 and R.L.A's opinion No.13-L,dated 3rd August 1940. As His Excellency the Governor has assumed to himself, by Proclamation under section 93 of the Government of India Act,all powers vested in either chamber of the Legislature, it will be necessary to lay before him a copy of the settlement report and other documents and also to foward a copy thereof to each member of each chamber of the Legislature.

3. The expression "a copy thereof" occurring in the latter part of the first sentence of section 117-L of the Bombay Land Revenue Code refers not only to the settlement report but also to the other documents specified in the preceding part of the sentence. It will therefore be necessary to forward to each member of the Legislature a copy of the settlement report, together with the objections, if any, received thereon, and the opinion of the Revenue Tribunal on a reference, if any, made to it under section 117-KK.

Sd. P.N.Moos 25/5
Remembrancer of Legal Affairs.

U.R.to R.D.,.No.4313. dated the 26th May 1942.

HRP.
14/5/56.

Office of the R.L.A.

It appears that the British Government granted in 1801 by a sanad to the Nabab Abul Khairkhan Savnnerkar of Savanur 25 villages excluding Huq and Huqqdars and Huqqdar and Inamdars annuities and Dharmadaya and Devasthan and Village sadilwar expenses. Some of these kadiam Inam comprise lands of Class V in t e Savnur State belonging to the Desai of Handignur and the Deshpande of Aladkatti and have been subjected to the Gordon Settlement. Judi in respect of these lands is paid by the Inamdars to the British Government and is credited to the Bankapur Taluka Treasury in the district of Dharwar. Some of these lands comprised in the Inam granted to the Deshpande of Aladkati were resumed by Government in 1937; but Government has however decided by G.R.(R.D.) No. 6792/33, dated 20th February 1940 to restore them to the Deshpande subject to certain conditions one of which being the power of Govern nt to enhance judi to the extent of full assessment. In the meantime the Savnur state has altered the assessment of these lands at the revision survey settlement introduced by it. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the levy of assessment on these lands by the Savnur State under the provisions of the State Land Revenue Code was competent; if not,

(2) Whether these lands are in liable to be assessed under the Bombay Land Revenue Code.

It appears from Aitchison's Treaties Volume VIII, 5th edition, p. 203 that in 1860 complete civil jurisdiction was conferred as a special mark of favour on Nawab Abdul Dalit Khan of Savnur. It is not clear from the papers underlying Government Order No. 368 of 1860 whether full revenue jurisdiction was also transferred with the civil jurisdiction. But such transfer may be presumed as for all practical purposes the State has since been recognised as a state possession independent crimin l and civil and revenue jurisdiction. (see the Memorandum of the Commissioner, S.D., underlying G.R.P.D.No. 467, dated the 19th January 1889).

The Kadim Inams have been excluded from the grant made to the Nawab of Savnur. They have for all practical purposes been treated as being outside the pale of the Nawab's revenue jurisdiction. The judi of these lands is payable to the British Government and no to the State. The Nawab had once attempted to resume some of the Kadim Inams but Government intervened and restored them to the grantes, thereby asserting and vindicting its own revenue jurisdiction.

The British Government has been exercising some jurisdiction in native States even though the States are considered as being sovereigns in their own internal affairs. The best justification which can be given for the exercise of the extra territorial powers of the Government of India will be found in tracing it to its sources;. The preamble to the Indian (Foreign Jurisdiction) Order in Council, 1902 recites the following sources: "Treaty, usage, sufferance and other lawful means" and of these the first three supply most of the "powers and jurisdiction exercised by Government on His Maj esty's behalf". Jurisdiction exercised may be one "delegated, residuary or substituted". "Delegaged" is meant to convey the idea of consent expressed by agreement or resting on sufferance. "Residuary" is intended to carry the mind to the defects in the sovereignty of the protected rulers, who from a remote part have shared the attributes of internal sovereignty with a superior power exercising jurisdiction in certain defined and well established cases. The phrase "substituted" is used for lack of a better term to describe the setting aside the jurisdictiony powers of a chief when such powers are neither delegated nor vested by usage in the paramount power, but taken out of the chief's hands and exercised for him by the will of a stronger power(see Warner's Native States of India, p. 340)

In the circumstances this appears to be a case of residuary revenue jurisdiction vesting in British Government over the Kadim Inam lands and consequently the State's action in leying the assessment on these lands at the revision survey was not competent, it being outside the revenue

jurisdicti on of the State. The fact that these lands were surveyed and settled along with the Darbar lands and no independent survey was carried out by the British Govt. for these lands would seem to make no difference, for the survey and settlement of the Savnur State was carried out and sanctioned by the British Government and the figures arrived at this survey were accepted for the purposes of the sanad and further accounts; there was also no necessity of introducing the revision and second revision settlement in the case of these lands, as the judi on these lands was fixed and paid in lump sum to Government under the Gordon Settlement Sanad.

The Bombay Land Revenue Code, 1879, has no application proprio vigore to the kadim lands in the Savnur State. Its application will be by virtue of foreign jurisdiction, (see section 4(a) and (b) of the Indian (Foreign Jurisdiction) Order in Council, 1902). The right to levy tax or assessment is a prerogative of the Crown (see 36 B.L.R. 297). If in exercise of such right the principles contained in the provisions of the Bombay Land Revenue Code are followed, there would not be any objection. Consequently although the Bombay Land Revenue Code, strictly speaking, does not apply to these lands there would not be any valid objection to assessing these lands according to the provisions of the Bombay Land Revenue Code on the analogy of orders contained in G.R. (P.D.) No. 2865, dated 2nd June 1884 in respect of the Inamiti Ramdurg Lands. It is however desirable to fix the position in this respect with reference to section 4 of the Indian (Foreign Jurisdiction) Order in Council, 1902, and the Political and Services Department will no doubt consult the Crown Representative forthe purpose if necessary.

Id/- P.N.M.
18/7
Remembrancer of Legal Affairs.

PSM. 2/5 U.R. to R.D.,No. 5899, dated the 20th July 1942.

Taken the Land Revenue Code and the Rules as they stand, it is clear that section 48 is the principal section laying down the manner of assessment and alteration of assessment and that section 65 and rule 86(a) read with rule 80 relate to authorised non/agricultural uses, while section 66 and rule 86(b) read with rule 80 relate to unauthorised non-agricultural uses. Sub-sections (1) and (2) of section 48 of the Land Revenue Code run as follows:-

"48. (1)The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of land,

(a)for the purpose of agriculture,
(b)for the purpose of building, and
(c)for the purpose other than agriculture of building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, nothwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Provincial Government may prescribe in this behalf"

2. The question raised is whether land revenue rule 86(a) is ultra vires of sub-section (2) of section 48 of the Land Revenue Code. The question arises thus: Rule 86(a) provides that:

"The non-agricultural assessment shall ordinarily be levied from the first day of the revenue year next succeding the revenue year in which permission to use the land for non-agricultural purposes was given, provided that where the use is temporary the Collector may in this discretion levy it from the first day on which or the commencement of the year in which the non-agricultural use begins."

Now, it may happen that a piece of land originally assessed for agriculture is permitted to be used for non-agricultural purpose under section 65 of the Code. But it may not actually come to be so used either

(1) for several years after the permission, or

(2) at all

and the levy of non-agricultural assessment from the revenue year next after the permission would become unrelated to the actual use of the land for a non-agricultural purpose. In the latter class of cases, where use never follows, rule86(a) has no application, since rule 80 provides that the rules in Chapter XIV (including rule 86) would not apply unless "unalienated land, assessed or held for purpose of agriculture only is subsequently used for any purpose unconnected with agriculture". It is the fact

former class of cases that now falls to be considered.

3. Secretary, R.D., takes the view that when use is unauthorised, the provision to be regarded is no section 48(2) but section 48(1) alone which says that land revenue shall be assessed or be deemed to have been assessed with reference to the use of the land and that the words underlined would validate the levy of the non-agricultural assessment under rule 86(a) between the year of permission and the year of use. The view taken by Secretary, R.D. is not supportable,. Ex-hypothesi the lands are originally assessed to agriculture under section 48(1) and it would seem that any altered uses, whether authorised or otherwise, are alike relatable to subsection (2) of section 48. Section 66 which clearly refers to unauthorised uses speaks of new assessment being fixed under section, 48. This new assessment is clearly the altered assessment under section 48(2). In the same way section 65 which concerns authorised uses speaks of new assessment being levied under section 48. This can properly mean the altered assessment under section 48(2). Moreover, rule 86(a) which concerns authorised uses, spoke of levying altered assessment in the same way as rule 86(b) which concerns unauthorised uses, (until in both the rules the term "altered assessment" came to be replaced by"non-agricultural assessment"). There is also authority for the view that non-agricultural assessment must be referable on first principles to actual use, whether that use is authorised or otherwise. In Raichan Vs. Gulabchand (41 B.L.R.1077) it was held that the mere intention to use the godowns for non-agricultural purpose without their actual use for that purpose would not enable Government to alter agricultural assessment in spite of permission having been sought and granted for a non-agricultural use. Applying the same principle, it can be contended that mere grant of permission under section 65 would not enable Government to levy non-agricultural assessment unless and until the land is actually used for a non-agricultural purpose. It is not therefore correct to say that sub-section (1) of section 48 enables Government to levy non-agricultural assessment for the time between the year of permission and the year of use.

4. Reverting to the question raised, rule 86(a) provides that non-agricultural assessment shall ordinarily be levied from the revenue year next after the year of permission; and since land revenue is no divisible pro-rata by the days of the year (see R.L.A.'s No. 4875 dated 13-6-42), the non-agricultural assessment so levied can be related to the actual non-agricultural use in all cases, except where the use does follow but not till after the end of the revenue year next succeeding the year of permission. Such exceptional cases would be relatively few and rule 86(a) appears to contemplate them as extraordinary cases left to e settled ad hoc under section 48(2) with reference to the year of use. Hence the word "ordinarily" in rule 86(a); that word would appear to save the rule from being ultra vires section 48(2). But the point is not quite free from doubt. Unless, any administrative inconvenience is likely to be caused by an amendment of the rule, it would be advisable to amend the rule to remove all ambiguity by omitting the referencce to the year of permission as district from the year of actual use.

5. As regards para. 3 of Secretary, R.D.'s note, there is no objection to amending rule 43 as suggested by him.

Id/- P.N.M.
22-7

Remembrancer of Legal Affairs.

U.R.to R.D.,No. 5991, dated the 23rd July 1942.

PSM. 3/5

Office of the R.L.A.

The view taken by the Secretary, Revenue Department in paragraph 3 of his note at page 91 ante is correct.

2. Remission or reduction of assessment under rule 35 of the Land Revenue Rules, 1921, does not amount to an alienation of land revenue or assessment within the meaning of clause (b) of sub-section (1) of section 93 of the Bombay Local Boards Act, 1923 read with section 3(20) of the Bombay Land Revenue Code, 1879. Consequently the local fund cess would be leviable under clause (a) of sub-section (1) of section 93 of the Bombay Local Boards Act, 1923, on the reduced rent or assessment.

Id/- P.N.M.
27-7

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6108, dated the 27th July 1942.

PSM. 3/5

Office of the R.L.A.

Certain lands in the village od Dasgaon, Taluka Mahad, District Kolaba were granted in olden times for cultivation on a permanent lease,. These lands are knowl lands and knowls(leases) in respect of them were granted in the years 1787 and 1788A.D. The copies of these leases are at pp. 29-33 ante. Under the terms of these leases rent was fixed either in cash or in kind. Some of these lands have been now alienated from the original holders' families by way of sale etc. S.No.20/3 of Dasgaon is a part of these lands and is purchased and held at present by one Mr. Husenmiya Dawood Patil. On 20-1-1938, Husenmiya pplied to the Minister for revenue, Government of Bombay, stating that his land S.No. 20/3 admeasuring 2 a - 37 g. was assessed at Rs. 23-1-0 The land yeilded nearly 2½ Khandis of paddy worth about Rs. 84-6-0 and out of that amount he had to pay Rs.64-11-9, as assessment under the knowl and he got only Rs. 19-10-3. He therefore requested that instead of the kwol assessment of Rs. 64-4-9, the survey assessment of Rs. 23-1-0 may be levied on his land. The R.D. forwarded the case to the Collector for disposal. On 14-2-1939, the Collector directed that assessment in respect os S. No. 20/3 should be taken in accordance with the assessment fixed by the Survey Department. The question raised by R.D. for R.L.A.'s consideration is whether Government can legally revise the Collector's order.

2. Though the lease in the present case is one of pre-British days, it has bee recognised and continued by the British Government. The terms of the lease are therefore binding on Government as well as Husenmiya and would continue to be binding on them until the lease is determined. Any interference with the terms of the lease without mutual consent would be invalid and unwarranted. The power either to terminate the lease or to revise the terms thereof with the consent of the leassee vests in this case in Government alone. (Cf. section175(1)

of the Government of India Act, 1935, and R.L.A.'s opinion No. 182-P. dated 26-10-1940). Consequently the order of the collector levying the survey assessment instead of the manual rent in the present case is without jurisdiction and null and void. Since the order is a nullity, it need not be revised or set aside but can fitly be ignored by the Collector himself. The Collector may cancel this former order and issue fresh demand notice in respect of the full rent due. If thereupon the leasee complains, and appeals to the Revenue Tribunal, it can be shown that the Collector's former order was mere nullity. Government may not therefore proceed to revise the Collector's order because firstly Government has no powers of revision in a revenue case (section 296 of the Government of India Act, 1935), and secondly it is needless to get the order revised by any authority whatever.

Id/- P.N.M.
29-9

Remembrancer of Legal Affairs.

U.R. to R.D.,No., 7935, dated the 30th September 1942.

PSM.3/5

Office of the R.L.A.

The view taken in para 1 of Secretary, R.D's note dated the 20th August 1942 is correct. Consequestly, unless Government proposes to proceed in revision afresh under section 211 of the Land Revenue Code and in such revision to cancell the Collector's order dated 20th November 1939 and to have eviction ordered under section 61 of the Code, it will not be legally feasible for Government to insist on the removal of the construction. Should Government proceed in revision as explained above, even then it is not free from doubt if equitable considerations will not weigh with courts in deciding the question of compensation that Mr. Patdar may proceed to claim in respect of the construction. Parappa vs. Secretary of State (I PJ) 1891, page 230 and Anant Nulkar vs. Secretary of State, 33 B.L.R. 213, (as well as the tentative view expressed in para 5 of the Bombay Revenue Tribunal's decision No.C.418 of 1940 dated 2nd October 1940 on the appeal petition of Ujjam Zumakram of Mokhada) appear to disfavour a delayed resort to revisional powers under the Code, especially if the subject has involved himself into expenses. on the faith of his title or authorisation.

Sd. r.m.Koos
31/10
Remembrancer of Legal Affairs.

U.R.to R.D.,No.6359, dated the 2nd Nov. 1942.

MRP.
14/3/56.

R.I.No.10862, dated 17-10-194..

Submitted.

2. Please see R.L.A's opinion No.5991, dated the 23rd July 1942. It seems from R.D. office note that the proposed amendment of Rule 86(a) is not administratively convenient. From the Secy.R.D's note at pp.26-28 ante that he has discussed this case with him and that R.L.A. has agreed that the view expressed in the Secy's note is plausible and that legislation to amend sec.43(2) need not be undertaken. The papers are shown to the R.L.A.

3. It is for orders whether the papers may be seen and returned or whether the case may be noted on in office.

Sd. S.R.Potnis
20/10

S.A.S.

A May be done.

Sd. B.G.M.
29/10.

D.S.

I was present at the discussion.

Reply may be:

Seen and returned.

The interpretation which Secy.R.D. has placed upon rule 86(a)
Read with section 43(1) of the Code is plausible enough; but as pointed out in R.L.A's opinion No.5991 dated 23-7-42, that interpretation appears to jettinson the interpretation all along put up section 43(1) and (2), section 65 and section 66, of the Code and rule 80 at seq. of the land Revenue Rules.
The recent amendments in the rules have to be interpreted on the principle that the

"language"

"language" and provisions of expired and repealed Acts on the same subject, and the construction which they have authoritatively received are also to be taken in to consideration. (See Maxwell at p.34). The best solution of all the difficulties is therefore an amendment of section 48. It is for R.D. to consider when the amend must be undertaken. R.L.A. has no objection if R.D. decides not to undertake the amending legislation at paresent, but to carry on till a popular Goverament takes office.

Sd. M.K.D.
29/10.

Secy.

Sd. P.M.M.
1/11.

U.R.to R.D.,No.9149, dated 13-11-42.

MRP.
14/5/56.

Office of the R.L.A.

The paper Currency Office site on Mahatma Gandhi Road, Bombay, which vested in the Government of India has been sold by it to the New India Assurance Co.,Ltd. The site comprises of land bearing new S.Nos.9455,9456 and 9457 and a small area of set-forward land acquired from the Bombay Municipality by way of exchange. New S.Nos. 9455 and 9456 were acquired by Government in the year 1910 and 1902 respectively. Before acquisition the land was of the quit and ground rent tenure. S.No.9457 was in the occupation of the old Bank of Bombay from prior to Laughton's Survey of 1865 and was liable to pay quit and ground rent assessment. Government purchased this property in 1867 and the assessment was written off in 1872. The Secretary, R.D. is of opinion that the quit and ground rent tenure does not subsist now in the case of these N.S.Nos.9455, 9456 and 9457 and that this Government has the legal right to claim full assessment under section 8 of the City of Bombay Land Revenue Act. The R.L.A. is requested to advise on this point.

2. S.Nos.9455 and 9456 on acquisition by Government ceased to be of their original tenure and became ordinary Government lands (see I.L.R. 36 Mad. 373; R.L.A's opinion No.10326, dated 15-12-1941 and the Advocate General's opinion No.10, dated 20-12-1941), S.No.9457 was purchased by Government and though the tenure of the land was "quit and ground rent" under which the land was not liable to full assessment, on purchase by Government the land became ordinary Government land under section 24 of the Bombay City Land Revenue Act, 1876, being freed from the incidents of its old tenure.

3. Exemption or partial exemption from the liability in respect of the land revenue could have been granted in this case to the purchasers of the lands only by the Provincial Government since land revenue is a Provincial subject. No such exemption has been granted.

Consequently

Consequently the land in question is in law liable to the full assessment leviable under section 8 of the Bombay City Land Revenue Act, 1876.

Sd. P.B.Moos,
9/12
Remembrancer of Legal Affairs.

U.R.to R.D.,No.9875, dated the 10th December 1942.

mm.
14/5/56.

Submitted.

It is proposed by the Registrar, High Court, A.S. That Deputy Nazirs appointed as gurdians of the Estates of mi[redacted]dia[redacted] the provisions of the Guardians a[redacted]rds Act, 1890, should be authorized to distrain [redacted] sell moveable proprty of defaulting tenents in order to enable them to progress in the collection of arrears of rent due. The Commr. S.D. proposes that warrants under sec. 154 of the Bombay Land Revenue Code, 1879, should be issued by the revenue authorities and sent to Deputy Nazirs for execution instead of to the Village Officers. It is proposed to issue a G.R. directing the Deputy Nazirs in their capacity as gurdians of the estate and ex-officiees superior holders to apply to the Collector of the District under section 86 of the Code for taking action under sec. 154; and further directing the Collectors to issue to the Deputy Nazirs for execution a warrant to distrain and sell the moveable property x of the defaulting tenant. The draft G.R. for this purpose is shown to the R.L.A. before issue. No specific point has been raised for the consideration of the R.L.A. but the question for consideration appears to be whether there is any legal objection to issuing the proposed orders.

2. The first question is whether a Deputy Nazir appointed as the guardian of property under the Guardians and Wards Act, 1890, can be said to be a superior holder within the meaning of section 86 of the Bombay Land Revenue Code, 1879, so as to be competent to apply to the Collector for assistance in recovery of dues. Under that section, upon written application to the Collector superior holders are entitled to assistance by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, in the same manner as prescribed in Chapter XI(of the Code)

for the realization of land revenue by the Provincial Government. A "superior holder" has been defined in section 3(13) of the Code to mean a landholder entitled to re eive rent or land revenue from other landhobders(i.e. inferior holders) whether e is accountable or not for such rent or land revenue or any part thereof, to the Provincial Government. Again a landholder means (vide section 3(11)) a person lawfully in possession of land, whether such possession is actual or not. Now, under section 20 of the Gurdians and Wards Act, 1890, a gurdian stands in a fiduciary relation to his ward. Under section 27 a gurdian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own and he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property. Finnaly section 37 declares the general liability of a guardian as trustee. It would appear from all these provisions that a Deputy Nazir appointed as gurdian is in lawful possession of the lands of his ward on his behalf and would be a landholder within the meaning of section 3(11) of the Bombay Land Revenue,Code. He would therefore be entitled as superioriholder to apply to the Collector under section 86 and obtain his assistance for recovery of rent due.

3. The next question is whether on the Deputy Nazir as guardian having applied under section 86, distraints can be made by him under the second para of section 154 the Collector is empowered to cause the defaulters' moveable property to be distrained and sold. It further provides that such distraints shallbe made by such officers or class of officers as the

as the Commissioner under the orders of the Provincial Government may from time to time direct. In sepcial cases, warrants under ~~the~~ section may be directed by the Collectors and their assistants to any persons whom they consider competent to ~~ex~~ execute it (G.R.No. 7858 dated 23rd December 188I, quoted at p. 1243 of Gupte's Land Revenue Code, 2nd. Edn.) .There would therefore appear no legal objection to issuing such warrants to the Deputy Nazirs applying for assistance under section 86. The proposed orders appear to be free from legal objection

Sd/-

24/10

PSM. 3/5

Office of the R.L.A.

There appears no legal objection to the measure proposed in the draft O.R. It seems inaccurate however to say that the Deputy Nazir is ex-officio a superior holder. His right to make an application under section 86 of the Land Revenue Code arises from the fact that he is a guardian of the minor who but for his age would be a superior holder competent to apply.

Sd. P.R.Moos
25/11
Remembrancer of Legal Affairs.

U/R.to R.D.,No.9462, dated the 26th November 1942.

HRP.
14/5/50.

Office of the R.L.A.

The paper Currency Office site on Mahatma Gandhi Road, Bombay, which vested in the Government of India, has been sold by it to the New India Assurance Co., Ltd., The site comprises of lands bearing new S.Nos. 9455, 9456 and 9457 Bombay Municipality by way of exchange. New S.Nos. 9455 and 9456 were acquired by Government in the year 1910 and 1902 respectively. Before acquisition of the land was/the of quit and ground rent tenure. S.No. 9457 was in the occupation of the old Bank of Bombay from prior to ground rent assessment. Government purchased this property in 1867 and the assessment was written off in 1872. The Secretary, R.D. is of opinion that the quit and ground rent tenure does not subsist now in the case of these N.S.Nos. 9455, 9456 and 9457 and that this Government has legal right to claim full assessment under section 8 of the City of Bombay Land Revenue Act. The R.L.A. is requested to advise on this point.

2. S.Nos. 9455 and 9456 on acquisition by Government ceased to be of their original tenure and became ordinary Government lands (see I.L.R. 36 Mad. 373; R.L.A.'s opinion No. 10826 dated 15-12-1941) and the Advocate General's opinion No.10, dated 20-12-1941), S.No. 9457 was purchased by Government and though the tenure of the land was "quit and ground rent" under which the land was not liable to full assessment, on purchase by Government the land became ordinary Government land under section 24 of the Bombay City Land Revenue Act, 1876, being freed from the incidents of itsold tenure.

3. Exemption or partial exemption from the liability in respect of the land revenue could have been granted in this case to the purchasers of the lands only by the Provincial Government since land revenue is a Provincial subject. Nosuch exemption has been granted. Consequently the land in question is in law liable to the full assessment leviable under section 8 of the Bombay City Land Revenue Act, 1876.

Id/-P.N.M. 9-12.
Remembrancer of Legal Affairs.

PSM.3/5 U.R. to R.D.,No.,9875 dated the 10th December 1942

Office of the R.L.A.

It appears that the Revision Survey Settlement was introduced in the Taluka of Malegaon in 1899-1900 for a period of 30 years. The period having expired in1928-29 the Settlement has been continued. Government proposes to introduce the 2nd Revision Survey Settlement in that area before 1st August1942 so that the new rates may be levied from the year 1942-43. In this connection the following questions are raised for the consideration of the R.L.A.s/---

(1) Whether the view that in view of the powers assumed by His Excellency the Governor under the Proclamation issued under section 93 of the Government of India Act, the procedure prescribed in section 117-L(1) of the Bombay Revenue Code, 1879, is suspended and Government can pass orders under section 117-L(2) of the said Act after approval of these orders by H.E. the Governor, is correct;

(2) (a) Whether the view that so far as the provisions of section 117-C, the Settlement cannot be introduced from any date other than 1st August i.e. from the beginning of the revenue year and as retrospective effect cannot be given to any such Government decision, the orders should be passed before 31st July and notice of the same given as prescribed in Rule 19-C of the Bombay Land Revenue Rules before 31st July and the Settlement introduced from 1st August 1942, is correct.

(2) (b) Whether the view that if the Settlement is introduced from 1st August 1942, the new rates will be levied in 1942-43 but the increase, if any, will have to be remitted in that year, though effect will have to be given to the decrease, if any and that the option to relinquish the land in the second proviso to section 117-C can be exercised till31st March 1944, is correct.

(3) Whether the introduction of the new Settlement with effect from the last year of the Current Settlement, is in order

2. Question No.(1) As regards this question attentionof the R.D. may be invited to paragraph 2 of R.L.A.'s opinion No.4313 dated 26th May 1942. After approval of the Settlement report by H. H.E. The Governor Government may pass orders under

under section 117-O(2). The view taken by the R.D. is correct subject to this modification that copies of the report etc. will have to be forwarded to every Member of each chamber of the Legislature as provided by section 117-O(1).

3. Questions (2)(a)&(b) and (3). Old sections103 and 104 of the Land Revenue Code were similar to the new section 117-O and the provides thereto introduced by the Bombay Act XX of 1939. Since the new rates could not be brought into force in the year immediately following the expiry of the Settlement on account of section 104 Government started introducing the revised Settlement in the last year of the expiring Settlement By adopting this device Government was enabled to get over the difficulty and was able to levy the revised rates immediately after the old period of gurantee expired (see Gupte('s Land Revenue Code p.738). The question whether such method was valid was raised in the Criminal Appeal No. 157 of 1928 of (Imperator vs. Moreshwar Jagannath Gogte, Slipo) and the High Court held without considiring it in detail or giving any reasons that it was lawful. But the R.L.A.(Mr. Balak Ram did not agree with that view of the High Court. According to him the revised Settlement must be introduced only after the old Settlement has expired and not before,, since otherwise there would be two settlements in force in the area. Although there is considerable force in the argument of the R.L.A.(Mr.Balak Ram) it appears that this question does not really arise in the present case.

4. The perıof of the Revision Survey Settlement of Malegaon having already expired it has continued to remain in force until the introduction of a revision settlement (see section 117-R of the Land Revenue Code). Section 117 provides that after the Provincial Government has passed orders uhder section 117-L and notice of the same has been given in the prescribed manner the Settlement shall be deemed to have been introduced and the land revenue

according to such Settlement shall be levied <u>from such date as the Provincial Government may direct</u>. The first proviso to section 117-O lays down that in the year in the course of which a survey settlement whether original or revised may be introduce under this section the difference between the old and the new assessment of small lands on which the latter may be in excess of the former shall be remitted and the revised assessment shall be levied only from the next following year. Rule 19-G(1) of the Land Revenue Rules, 1921, provides that notice under section 117-O shall be in Form-A-11. In the notice in Form-A-11 it is necessary to state from what year the new rates shall be levied and the period during which the Settlement will remain in force. The words "revenue year" or "year" means the period from and exclusive of the thirty first July of one calendar year until and inclusive of the thirty first July in the next calendar year. Reading with these provisions together it will be clear that if a notice is given that introduction of the 2nd revision Settlement in the Malegaon Taluka is directed to take effect from a date before 31st July 1942, the Settlement will be deemed to have been introduced in the year 1941-42. In that case, since the revenue year is not run out, and since the revenue is not divisiable over the days of the year pro rata, the new rates will take effect for the revenue year 1941-42 except that the increase if any will have to be remitted. The option to relinquish under section117-O can be exercised till 31st March 1943 If however the notice directs thedate for introduction of the Settlement to be after 31st July 1942, it would be deemed to have been introduced with effect from the year 1942-43 so that the new rates would be leviable in 1942-43 and the increase if any will have to be remitted in that year and the option to relinquish the land under the second proviso to section 117-O can be exeecised till 31st March 1944.

Id/- P.N.M.
13/6

Remembrancer of Legal Affairs.

U.R. to H H.D.,No. 4876, dated the 13th June 1942.

PSM. 3/5